U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN P. BLAISDELL and U.S. POSTAL SERVICE,
POST OFFICE, Cumberland Center, ME

Docket No. 98-544; Submitted on the Record;
Issued December 29, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to wage-loss compensation from January 25 to December 22, 1995.

On February 13, 1995 appellant, then a 62-year-old part-time flexible clerk, filed a claim alleging that her low back muscle strain was caused by factors of federal employment.

In an attending physician's report dated November 1, 1995, Dr. Peter T. Gordon, appellant's treating physician Board-certified in internal medicine, stated that appellant injured her lower back while on duty on January 26, 1995 and that she was able to return to light duty on January 31, 1995 with a lifting restriction of not more than 25 pounds.[1]

On November 13, 1995 appellant filed a claim for wage loss from January 25 to December 22, 1995.[2]

On January 26, 1996 the Office of Workers' Compensation Programs requested the employing establishment to determine the number of hours appellant averaged at work during the year prior to her work-related injury and whether light or limited duty had been offered to her. On that same day, the Office requested appellant's treating physician to submit a detailed medical narrative indicating the period and extent of disability and whether the disability was partial or permanent. In a medical report dated February 10, 1996, Dr. Gordon stated that appellant had sustained a low back injury at work on January 26, 1995,[3] and that she could return

[1] The Board notes that in his November 1, 1995 report, Dr. Gordon stated that appellant's injury occurred on January 26, 1995 rather than January 25, 1995.

[2] Appellant alleged that she should have been compensated for an average of 24 hours a week after her work-related injury, which was the average work week for the year prior to the injury. Appellant never stopped work, but was limited in the number of hours she worked after January 25, 1995.

[3] As noted, the date of injury was January 25, 1996.

to work on January 31, 1995 with a lifting restriction of 25 pounds. On February 22 1996 the employing establishment notified the Office that appellant, as a part-time flexible clerk, had worked an average of 24 hours a week during the year prior to her work-related injury including some higher level work which was no longer available. The employing establishment further added that appellant had declined some work in 1995. It further noted that it hired an additional part-time flexible clerk in April 1995 which had further limited appellant's work hours.

In a limited-duty offer sheet dated February 21, 1996 and received by the Office on February 26, 1996, appellant signed a temporary alternate position, which restricted appellant to "limit[ed] distribution, box section distribution" and "window clerk."[4]

On March 11, 1996 the Office accepted appellant's claim for low back strain. In its acceptance notification, the Office advised appellant that "all claims for continuation of pay or for compensation must be supported by medical evidence substantiating disability."

On March 27, 1996 appellant filed a claim for wage-loss compensation from January 25, 1995. In a Form CA-3 received by the Office on July 3, 1996, the employing establishment stated that appellant's job assignment had not changed as a result of her work-related injury.

On July 8, 1996 the Office notified appellant that the medical evidence on file noted that she was able to work "with the only limitation of a 25 pound lifting restriction" and that to establish her claim for continuing compensation she would need to submit medical evidence to support her claim for sick leave in weeks in which she worked fewer than 24 hours. The Office noted that her claim for compensation was based on her work-related injury "as distinguished from [appellant's] nonwork-related injuries of systemic osteoarthritis, hip and knee arthritis, and bilateral thumb arthritis."

On the same date, the Office requested the employing establishment to determine why appellant worked fewer than 24 hours a week after her work-related injury and to state specifically as to whether it was based on her work-related injury, nonwork-related injury or due to lack of work.[5]

On July 26, 1996 the employing establishment stated that "since January 25, 1995 and until the present date, the [employing establishment] did not have work available for her" and that "[D]ue to budgetary constraints, [appellant] is receiving less hours than prior to her accident" and that the reduction in hours worked "was not, in any way, related to her work-related injury."

[4] The Board notes that this form was dated October 5, 1995, it was stamped received by the employing establishment on October 11, 1995, but that appellant appeared to incorrectly annotated her signature as occurring on February 21, 1996.

[5] The Office's January 26, 1996 request asked only to determine the average hours per week appellant worked prior to her work-related injury and whether light or limited duty had been offered.

On September 23, 1996 the Office, in a decision, denied appellant's claim on the grounds that appellant had not established that she had lost hours of work due to her work-related injury.

In a statement dated October 15, 1996, appellant's union representative stated that employing establishment's management advised her that because of appellant's work restrictions she "was not getting available work hours."

On October 18, 1996 appellant requested an oral hearing.

On October 21, 1996 appellant filed a claim for wage loss from March 22 to October 25, 1996. In response to appellant's October 21, 1996 claim for continuing compensation, the employing establishment stated on October 28, 1996 that appellant's prior year average work week of 24 hours was augmented by 333.68 hours of higher level work which was no longer available to her and that, when adjusted for work at her grade, appellant worked an average of 17.59 hours per week in 1994; that in 1995 the employing establishment was authorized 73 clerical hours a week, that the full-time clerk was staffed at 40 hours leaving 33 hours for either 2 part-time clerks, which would result in 16.5 hours per week or 11 hours per week if three clerks were used.[6] The employing establishment further noted that appellant had been tardy for work on multiple occasions and had declined to work on three Saturdays which would have amounted to six hours each day.

The hearing was held on June 25, 1997. In a post-hearing report dated July 14, 1997, the employing establishment stated that in the year prior to her work-related injury, 1994, appellant worked a higher grade level but that that work was no longer available to appellant except for rare instances when no other personnel were available. The employing establishment noted that "[D]uring 1995, a new employee was hired," and that it was agency policy to provide 40 hours of work a week for new employees until trained, "so it may appear that more hours are given to certain employees during this time frame." The employing establishment added that appellant received fewer hours in 1995 than in 1994 based on "budgetary constraints, (appellant) not working on a higher level on a regular basis, her declination of working when offered the opportunities, and extenuating circumstances such as a new employee being hired and needing extensive on-the-job training."

In a decision issued on August 21 and finalized on August 26, 1997, the hearing representative affirmed the Office's September 23, 1996 decision, denying appellant's claim for wage loss from January 25 to December 22, 1995.

The Board finds that appellant is not due any compensation for wage loss from January 25 to December 22, 1995 causally related to her January 25, 1995 work-related low back strain.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes

[6] In an undated report, received by the Office on August 1, 1996, the employing establishment noted that it had a staffing authorization of one postmaster, one clerk and three part-time flexible clerks.

that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.[7]

In the instant case, the Office accepted that appellant sustained a low back injury while in the performance of duty on January 25, 1995. In support of her claim appellant submitted medical reports from Dr. Gordon, her treating physician Board-certified in internal medicine, who stated essentially that appellant had injured her back at work on January 25, 1995 and that she could return to duty on January 31, 1995 with a lifting restriction of 25 pounds. Although appellant maintained that her hours of work were reduced from an average of 24 hours a week in 1994 from the date of the work-related injury on January 25, 1995 as a result of the employing establishment's reaction to her injury, appellant failed to present any evidence to support her claim. Indeed that employing establishment presented evidence that appellant's average work week prior to the injury was only 17 plus hours a week in her grade and an additional 6 hours a week work in a higher grade. Further, the employing establishment demonstrated that staff augmentation and training requirements reduced the amount of hours that appellant could work as opposed to a reduction of hours based on her work-related injury. The employing establishment also noted that appellant was offered an additional 18 hours of work in 1995 which she declined. Further, appellant's allegation that the employing establishment stated that her hours were reduced as a result of her work-related injury were uncorroborated and thus have no probative value in establishing her claim. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.[8] To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and his medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof as her restriction accounted only for a work-related function, but did not limit appellant to hours of work. None of Doctor Gordon's reports are sufficient to meet appellant's burden of proof as he did not offer a medical rationale explaining how and why appellant's work-related condition prevented her from performing the duties of her light-duty position. As appellant has failed to submit sufficient rationalized medical opinion to establish that she was unable to work in her light-duty position, she has failed to establish that she was disabled and thus is not entitled to continuing compensation benefits for times when she did not work. Without such evidence, appellant cannot establish her claim for compensation on and after January 25, 1995.

[7] *Cloteal Thomas*, 43 ECAB 1093 (1992); *Cynthia M. Judd*, 42 ECAB 246 (1990); *Terry R. Hedman*, 38 ECAB 222 (1986).

[8] *Donald W. Long*, 41 ECAB 142 (1989).

Consequently, appellant has not met her burden of proof as she submitted insufficient medical evidence indicating that the accepted injury caused a continuing disability after January 25, 1995.

The August 21, 1997 decision finalized August 26, 1997 of the Office of Workers' Compensation Programs is affirmed.[9]

Dated, Washington, D.C.
December 29, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[9] Although the hearing representative did not specifically address the October 21, 1996 claim for wage loss from March 22 to October 25, 1996 in his decision, it is presumed it includes this claim.